

Service Date: April 10, 1981

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of The Application	)	
of the MONTANA POWER COMPANY for)		UTILITY DIVISION
Authority To Increase Rates and	)	DOCKET NO. 81.3.28
Charges For Natural Gas Service.	)	INTERIM--RATE-ORDER NO. 4775
_____)		

FINDINGS OF FACT

1. On March 10, 1981 the Montana Power Company (MPC) filed with the Commission a natural gas tracking application. The filing was assigned Docket No. 81.3.28.
2. The application seeks approximately \$15.848 million in natural gas revenues. Of this amount, \$6.85 million reflects the impact on total gas supply costs, as found in Order No. 4714a, of the increase in the Canadian Border Price from \$4.47 per MMBTU to \$4.94 per MMBTU effective April 1, 1981. The balance, approximately \$9 million, reflects changes in the natural gas mix and market conditions from those in Order No. 4714a.
3. The application seeks \$15.848 million, the full amount, in temporary rate relief. In the alternative the Company moves that the Commission approve rates reflecting \$6.85 million in increased Canadian gas costs on an interim basis.
4. Rate of return, rate base and non-gas cost revenues and expenses approved in Docket No. 80.4.2, Order No. 4714a are utilized by the Company in its application.
5. The Commission finds approval of the full amount of the rate request of \$15.848 million to be premature in this instance. The loss in market associated with the Anaconda shutdown and the effect of residential conservation appear to be known and measurable changes. However, changes in sources of supply to reflect these changes are not as clear. Montana royalty gas levels in Percival's testimony are lower than those approved in Order No. 4714a because of alleged minimum take-or-pay requirements associated with Montana purchased gas. These

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requirements are not explained in testimony however. Royalties paid on Montana royalty gas have also been increased in the Company's filing to account for the affect of the Cravick case a factor not present in Order No. 4714a or explained here. It is not readily ascertainable if Company use and loss percentage amounts are consistent with those found in Order No. 4714a. The level of off line sales to the Bird Plant is also not explained.

6. Gas expenses associated with the increasing Canadian border price as applied to supply volumes found in Order No. 4714a do fit the interim criteria for tracking cases found in 38.5.506, ARM, however. They are both clearly identifiable and constitute know, increased expenses. The Commission finds associated interim relief of \$6.85 million to be appropriate, subject to reductions explained below.

7. Since August, 1979, the Company has accrued a reserve for payment (to certain Montana gas producers) of severance taxes imposed by the State of Montana. The accrual was initiated when the Commission granted interim relief in Docket No. 6704, the \$2.80 Canadian border price. Approximately 7,346 MMcf of Montana purchased gas was price-linked to the Canadian border price. When the border price went from \$2.30 to \$2.80 these volumes reached the NGPA Section 105 price ceiling and are currently governed by it. Producers maintain, however, that the NGPA prices does not include severance taxes and purchasers should be liable for these taxes over and above the NGPA price. They are contesting this issue.

8. During December, 1980 the Federal Energy Regulatory Commission (FERC) issued Order No. 108 directing the severance taxes on 105 gas be paid by the producer. This order was stayed in January, 1981, however, and the proceeding appears to be in limbo. Final disposition may not be for several years.

9. Through February, 1981, the amount accrued was approximately \$5.4 million.

10. It is appropriate that the Company retain the amount accrued because of the pendency of FERC Docket No. RM80-21, in which Order No. 108 was issued and subsequently stayed, until the FERC or the federal courts finally decide the issue of the company's liability

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with respect to the severance tax. The amount accrued, as found in Finding No. 9 above, will be disposed of consistent with the final decision of the federal agency or courts.

11. To protect the interests of consumers respecting the amount accrued, the thirteen-month average test year (Docket No. 80.4.2 test period) balance of the accrual should be reduced from the working capital component for the natural gas utility found in Commission Order No. 4714a and the Company's natural gas utility revenues reduced \$360,855.

12. The consumers are also protected in the event Order No. 108 is upheld. Montana Power Company correspondence dated March 18, 1981 stated:

"In the event of a final order by the Federal Energy Regulatory Commission or the courts, as appropriate, to the effect that the Company is not responsible for paying such severance taxes to producers, the Company will ask the Commission to adjust rates to Montana consumers to reflect the appropriate disposition of such funds as have been accrued for such purpose, regardless of the time period of the accrual or the fact that a portion of this accrual relates to a time period in calendar year 1979 prior to the promulgation of the deferred accounting procedure in Docket No. 6706."

13. The Commission finds that continued accrual through the Company's natural gas rates of a reserve to pay severance taxes is not appropriate. The Commission believes that terminating the accrual is appropriate for this interim order because the Company has accrued a significant reserve to date, as found in Finding No. 9 above, and because the Commission will allow the Company to amortize any liability the Company incurs with respect to the severance tax under the final decision by the federal agency or courts respecting the issue.

14. The Commission finds the termination of the accrual with respect to severance taxes will reduce natural gas utility expenses under Order No. 4714a by \$4,262,000. This reduction in expenses should be reflected in a dollar-for-dollar reduction in the revenue requirements of the natural gas utility.

15. The Commission finds that Montana Power Company is entitled to \$2,227,606;

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\$6,850,461	Canadian Border Price Increase
(360,855)	Severance Tax Working Capital Offset
<u>(4,262,000)</u>	Severance Tax Accrual Offset
<u>\$2,227,606</u>	

16. Rate structure shall be that approved in Order No. 4714a adjusted for increased revenue granted herein.

CONCLUSIONS OF LAW

1. Applicant, Montana Power Company, is a corporation providing natural gas service within the State of Montana and as such is a "public utility" within the meaning of Section 69-3-101, MCA.
2. The Montana Public Service Commission properly exercises jurisdiction over the Applicant's Montana operations pursuant to Title 69, Chapter 3, MCA.
3. Section 69-3-304, MCA, provides, in part, "The Commission may, in its discretion, temporarily approve increase pending a hearing or final decision."
4. The rate levels and spread approved herein are a reasonable means of providing interim relief to Montana Power. The rebate provisions of Section 69-3-304, MCA, protect ratepayers in the event that any revenue increases authorized by this Order are found to be unjustified in the final order in this Docket.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. Applicant, Montana Power Company is hereby granted interim rate relief in the amount of \$2,227,606 on an annual basis to be effective for services rendered on and after April 3, 1981.
2. Montana Power Company is authorized to file tariffs repricing natural gas service in the manner described in the preceding Findings of Fact and to the degree necessary to generate \$2,227,606 in additional annual revenues.

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3. Interim revenues granted herein are subject to rebate should the final order in this docket determine that a lesser increase is warranted. Such a rebate would include interest at 10 percent per annum.

DONE IN OPEN SESSION this 3rd day of April, 1981 by a 5-0 vote.

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

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Gordon E. Bollinger, Chairman

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John B. Driscoll, Commissioner  
Voted to Dissent

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Howard L. Ellis, Commissioner

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Clyde Jarvis, Commissioner

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Thomas J. Schneider, Commissioner

ATTEST:

Madeline L Cottrill  
Secretary

(SEAL)

NOTE: You may be entitled to judicial review of the final decision in this matter. If no Motion For Reconsideration is filed, judicial review may be obtained by filing a petition for review within thirty (30) days from the service of this order. If a Motion For Reconsideration is filed, a Commission order is final for purpose of appeal upon the entry of a ruling on that motion, or upon the passage or ten (10) days following the filing of that motion. cf. the Montana Administrative Procedure Act, esp. Sec. 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp. 38.2.4806, ARM.

## DISSENTING OPINION

By: John B. Driscoll, Commissioner

April 1981

In this order the Commission has properly directed the Montana Power Company to stop accruing funds from the rate payer to cover the possible cost of severance taxation at a rate of \$4.262 million per year. It is also wise to allow the already accumulated \$5.2 million to remain with the utility until we are certain that payment of the tax by the rate payer is not necessary.

Furthermore, this Commission order insures that the rate payer is receiving the return accruing to the \$5.2 million reserve at a rate of \$361,000 each year. This is fair to the rate payer, and I concur.

My dissent is for three reasons:

1. The 10% interest rate stipulated to for refund of possible overcharges is not high enough. It reflects neither the consumer's nor the utility's cost of borrowing with today's market. Very likely the interest rate will be less than the rate of inflation faced by the consumer. When the money is returned, its present value will be considerably less than if it had been spent outright by the consumer on the day it was paid to the utility, not to mention if it were invested at all wisely.

If the Legislature's mandated ceiling of 10% for general rate increase refunds is applicable then why the need for a stipulation between the utility and the Commission? Clearly, there is an opportunity to stipulate at a more realistic interest rate, and we should make an effort to reflect the true value of the money to both, the ratepayer and the utility.

2. The decision to award the full requested increase of \$6.8 million as an adjustment for Canadian border price increases is premature. Renegotiation of the utility's take or pay contracts is very likely to lessen the company's dependence on the higher priced energy in a very short time. If the negotiations fail, then the company could still be awarded the increase.

Gas purchasers in the State of California were recently successful in negotiating more favorable terms, and Montana Power negotiators...to their credit.. are in the advanced stages of

similar arrangements. Should the \$6.8 million be an over calculation, as is likely to be in this case, the ensuing refund to the rate payer of perhaps \$6 million will be at an unfavorable interest rate. For this reason alone, I would rather wait until the new contracts have been signed, before adjusting rates to reflect new Canadian price and supply realities.

3. Finally, since the interaction of severance tax overcollection, severance tax reserve interest flow through, new take or pay terms with Canada, and increasing border prices seem to make this more than just a simple "gas tracking" case, this situation is not simple and clear enough to fit our procedural rules for interim rate increases. This complex interaction is further complicated by projected cutback in sale volumes of gas by the Montana Power to Northern Natural and the recent loss of gas sale volumes due to the Anaconda Company closure.

All of the facets of this case should be considered together, after a public hearing and after finalized negotiations with the Canadians, before issuance of a final order. For these reasons I am dissenting from this Interim Order.

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JOHN B. DRISCOLL, Commissioner